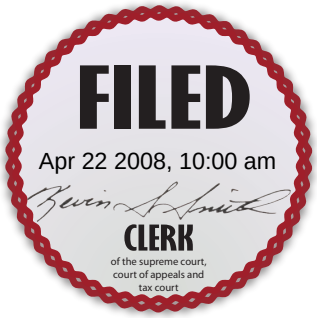

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IN THE
COURT OF APPEALS OF INDIANA

PHILLIP PATTERSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0709-CR-547
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Barbara Collins, Judge
Cause No. 49F08-0707-CM-132946

April 22, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Phillip Patterson appeals his conviction, after a bench trial, of battery as a class B misdemeanor.

We affirm.

ISSUE

Whether sufficient evidence existed to negate Patterson's claim of self-defense.

FACTS

At the time of the underlying incident, Patterson was employed at Harvard Square Co-op, an apartment complex in Marion County. On July 6, 2007, while Patterson and his coworkers were on their break, Patterson telephoned his mother. During the loud conversation, Patterson swore at his mother. Approximately four or five of Patterson's coworkers, including Marker Tester and David Coffin, were present in the break room, and they heard Patterson's profanity-laced conversation.

Tester commented to his coworkers about how Patterson was speaking to his mother. Patterson, who was still on the telephone, overheard Tester's remark and swore at him. Patterson then told his mother, "I need you to bring your gun up here. I need to take care of this fat guy in the office." (Tr. 84). In response, Tester told Patterson to either "clock out and go home" or to return to work. (Tr. 21). Patterson refused and continued to argue. Tester then notified his supervisor of the incident and urged him to come to the apartment complex.

After the supervisor arrived, he and Patterson "had an exchange of words." (Tr. 22). When Patterson claimed that Tester had threatened him, Tester responded that Patterson had threatened to shoot him. Patterson then "called 911, [and] said he was being threatened with a gun." (Tr. 22). The supervisor "had enough." (Tr. 22). He terminated Patterson's employment and ordered him from the premises. Patterson appeared to leave; however, he returned approximately thirty to forty-five minutes later.

On his return, Patterson encountered his mother arguing outside with Tester. Approximately four or five coworkers stood by witnessing the exchange. As the pair argued, Patterson approached from behind his mother and punched Tester "square in the mouth." (Tr. 11). Tester did not strike Patterson in return. Coffin tackled Patterson and was holding him in a headlock when police arrived.

On July 6, 2007, the State charged Patterson with disorderly conduct and battery, as class B misdemeanors. Patterson was tried before the bench on August 24, 2007. Tester testified to the foregoing facts. Patterson also took the witness stand. On cross-examination of Patterson, counsel for the State attempted to establish the course of events that occurred after Patterson had returned to the scene. The following colloquy ensued:

> State: Did you go inside when you came back?
>
> Patterson: No.
>
> State: You stayed outside?
>
> Patterson: I was outside talking to my mom.
>
> State: Okay, and you were talking to your mom. About how long were you talking to your mom for?

> Patterson: Like five minutes. I mean [Tester] was still talking bad stuff to my mom, saying like I was the one doing everything.
>
> State: And is that when you hit him?
> Patterson: Yeah, cause [sic] he made me mad.

(Tr. 62). The trial court found Patterson guilty of class B misdemeanor battery. Patterson now appeals his conviction.

DECISION

Patterson argues that he was "provoked into acting in self-defense." Patterson's Br. at 3. Specifically, he argues that Tester, Coffin, and others provoked him into "acting [o]n what he believed was the imminent threat of force." Patterson's Br. at 4.

In order to support a conviction for class B misdemeanor battery, the State was required to prove that Patterson knowingly or intentionally touched Tester in a rude, insolent, or angry manner. Ind. Code § 35-42-2-1(a).

> A valid claim of self-defense is legal justification for an otherwise criminal act. The defense is defined in Indiana Code section 35-41-3-2(a):
>
> A person is justified in using reasonable force against another person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force. However, a person:
>
> (1) is justified in using deadly force; and
> (2) does not have a duty to retreat;
>
> if the person reasonably believes that that force is necessary to prevent serious bodily injury to the person or a third person or the commission of a forcible felony. No person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting the person or a third person by reasonable means necessary.

Hood v. State, 877 N.E.2d 492, 496 (Ind. Ct. App. 2007).

When a defendant asserts a claim of self-defense, he must demonstrate that he (1) was in a place where he had a right to be; (2) did not provoke, instigate, or participate willingly in the violence; and (3) had a reasonable fear of death or serious bodily harm. *Pinkston v. State*, 821 N.E.2d 830, 842 (Ind. Ct. App. 2004). Once a defendant claims self-defense, the State must disprove at least one of these elements beyond a reasonable doubt for the defendant's claim to fail. *Hood*, 877 N.E.2d at 497. The State may meet this burden by either rebutting the defense directly, by affirmatively showing that the defendant did not act in self-defense, or by relying upon the sufficiency of its evidence in chief. *Id*. Whether the State has met its burden is a question of fact for the factfinder. *Id*. The trier of fact is not precluded from finding that a defendant used unreasonable force simply because the victim was the initial aggressor. *Birdsong v. State*, 685 N.E.2d 42, 45 (Ind. 1997).

The standard upon appellate review of a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence claim. *Wallace v. State*, 725 N.E.2d 837, 840 (Ind. 2000). We neither reweigh the evidence nor judge the credibility of witnesses. *Id*. If there is sufficient evidence of probative value to support the conclusion of the trier of fact, then the bench trial will not be disturbed. *Id*.

The evidence presented at trial was sufficient to show that Patterson provoked, instigated, and participated willingly in the violence against Tester. Tester testified that within approximately forty-five minutes of being terminated and ordered from the premises, Patterson returned to the apartment complex and initiated the violence by

striking Tester in the mouth. At trial, Patterson testified that he struck Tester in anger. We are not persuaded by his claim that he lashed out in fear for his own well-being. Patterson's argument that he was provoked merely amounts to an invitation that we reweigh the evidence and the credibility of the witnesses, which we cannot do.

The State has met its burden of negating at least one of the elements of self-defense, *i.e.*, establishing that Patterson provoked, instigated, and participated willingly in the violence against Tester. Thus, we find that sufficient evidence exists to both sustain Patterson's conviction and to negate his claim of self-defense.

Affirmed.

SHARPNACK, J., and NAJAM, J., concur.